

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
4X Corporation)	File No. D026459
)	
Applications for Authority to Operate on)	
Frequencies 853/854.6874 MHz at)	
New London, Wisconsin)	

MEMORANDUM OPINION AND ORDER

Adopted: February 7, 2000

Released: February 11, 2000

By the Commission:

1. The Commission has before it an Application for Review, filed by 4X Corporation ("4X"),¹ in which 4X seeks review of a decision by the Commercial Wireless Division ("Division") of the Wireless Telecommunications Bureau denying 4X's petition for reconsideration.² In its petition, 4X sought reconsideration of the Division's prior denial of 4X's request to waive the freeze on filing of 800 MHz General Category applications and to grant its application for two General Category frequencies.

2. In support of its waiver request, 4X contends that on February 24, 1995, prior to the General Category application freeze, it submitted an application to the 800 MHz frequency coordinator for the two frequencies at issue. The coordinator returned the application because it conflicted with an application filed by Smart SMR of Illinois (Smart) on June 27, 1994, for facilities in the same area. 4X contends, however, that Smart's 1994 application should not have been accepted for filing by the Commission because it was filed without prior frequency coordination. Because this alleged administrative error by the Commission prevented 4X's application from being coordinated, 4X urges the Commission to correct the alleged error by waiving the freeze and granting 4X's subsequent application.³

3. We conclude that 4X has raised no issues on application for review that would lead us to change the Division's decision. The Division properly concluded that the Commission's rules did not require rejection of Smart's uncoordinated application at the time of filing, and that acceptance of the

¹ Application for Review filed October 5, 1998.

² Denial of Petition for Reconsideration, Terry L. Fishel, Esq., (Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division), to Kathleen A. Kaercher, Esq., (Brown & Schwaninger) dated Sept. 4, 1998 (ref. no. 7110-24) (Division Reconsideration Order).

³ Application for Review at 8.

uncoordinated application did not preclude it from being subsequently coordinated.⁴ Thus, there is no basis to conclude that administrative error was committed. In addition, the record shows that Smart's application was subsequently coordinated in December 1994, and that this coordination occurred prior to 4X's February 1995 submission of its original application to the coordinator.⁵ Thus, even if it were error for the Division not to have dismissed the application as premature, Smart could have refiled its application immediately after its coordination in December, thus blocking 4X's subsequent application. As a result we find that any error had no prejudicial effect on 4X's application. Finally, 4X has failed to justify a waiver of the application freeze based on these objections because it had the opportunity to raise the same objections prior to the freeze and failed to do so.⁶ Therefore, we affirm the Division's decision.

4. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act, as amended, 47 U.S.C. § 155(c)(5), and Section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by the 4X Corporation on October 5, 1998 in the above-captioned proceeding IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁴ Division Reconsideration Order at 1.

⁵ According to ITA, Smart's application was coordinated on December 12, 1994. *See* Petition for Reconsideration, filed July 2, 1998, at 2.

⁶ Division Reconsideration Order at 1-2.